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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re EMILY F., a Person Coming Under  
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JEFFREY F. et al,

Defendants and Appellants.

D055269

(Super. Ct. No. NJ14034)

APPEAL from an order of the Superior Court of San Diego County, Blaine K.

Bowman, Judge. Affirmed.

Jeffrey F. and Crystal J. (together the parents) appeal an order designating Nathaniel and Alicia G. as the de facto parents of their daughter, Emily F. They contend the juvenile court erred because at the time of the order they were attempting to reunify with Emily. We affirm the order.

## FACTUAL AND PROCEDURAL BACKGROUND

On September 15, 2008, the San Diego County Health and Human Services Agency (the Agency) petitioned on behalf of two-year-old Emily under Welfare and Institutions Code section 300, subdivision (b) on the basis of the parents' use of drugs, their lack of supervision of Emily, and the dangerous conditions in the family home. Emily was detained in Alicia and Nathaniel's licensed foster home.

At the jurisdictional hearing on October 28, 2008, the court found the allegations of the petition to be true, removed Emily from the parents' custody, placed her in foster care and ordered reunification services. Jeffrey appeared at a special hearing on January 13, 2009, and the court ordered paternity testing for him.

In a report prepared for the six-month review hearing scheduled for April 7, 2009, the social worker reported Emily remained in Alicia and Nathaniel's care. They said she was adjusting well and the frequent tantrums she had initially displayed had decreased significantly. The social worker recommended terminating Crystal's reunification services because she was not complying with the services ordered for her, was not participating in substance abuse treatment, and had come to only about half of the visits that had been scheduled for her with Emily.

On May 7, 2009, Alicia and Nathaniel filed a request to be named Emily's de facto parents. On May 12 the court received paternity test results indicating Jeffrey is Emily's biological father.

In an addendum report filed June 10, 2009, the social worker reported Crystal had begun participating in substance abuse treatment and was attending counseling and

visiting Emily. The social worker changed her earlier recommendation to terminate services and instead recommended Crystal continue to receive reunification services and Jeffrey be granted services.

At the six-month review hearing on June 10, over the parents' objections, the court granted Alicia and Nathaniel's request for de facto parent status. The court found they met the criteria to be designated Emily's de facto parents and noted the fact the parents were engaged in services was not a factor for it to consider in making its determination.

## DISCUSSION

Crystal and Jeffrey contend the court abused its discretion by granting Alicia and Nathaniel de facto parent status. They argue the court incorrectly believed it did not have discretion to consider whether they were participating in reunification services when deciding whether to grant the application.

### *I. Legal Principles*

The concept of a de facto parent was judicially created to recognize limited rights in dependency cases for a person who has been found by the juvenile court to have assumed on a day-to-day basis the role of a parent, fulfilling the child's physical and psychological needs for a substantial period of time. (*In re Kieshia E.* (1993) 6 Cal.4th 68, 70-71; Cal. Rules of Court, rule 5.502(10).) In determining whether a person is a de facto parent, the court considers factors such as whether the child is psychologically bonded to the adult; whether the adult has assumed the role of a parent on a day-to-day basis for a substantial period of time and possesses information about the child that is unique from other participants in the process; whether the adult has regularly attended

juvenile court hearings; and whether a future proceeding may result in an order permanently foreclosing any further contact with the adult. (*In re Patricia L.* (1992) 9 Cal.App.4th 61, 66-67; *In re Ashley P.* (1998) 62 Cal.App.4th 23, 27.)

A de facto parent is entitled to be present at hearings with counsel and to introduce relevant evidence that may aid in the trial court's decision-making process with respect to the child's best interests. (*In re Joshua S.* (1988) 205 Cal.App.3d 119, 125.) The doctrine of de facto parenthood should be "liberally applied to ensure that all legitimate views, evidence, and interests are considered in dispositional proceedings involving a dependent minor." (*In re Kieshia E., supra*, 6 Cal. 4th at p. 76.)

The decision to grant or deny de facto parent status depends on an assessment of the particular individual and the facts of the case. (*In re Patricia L., supra*, 9 Cal.App.4th at pp. 66-67.) The person applying for de facto parent status has the burden of showing he or she qualifies to be a child's de facto parent. (*In re Jacob E.* (2004) 121 Cal.App.4th 909, 919.) The juvenile court applies the preponderance of the evidence standard in making its factual findings. (*In re Leticia S.* (2001) 92 Cal.App.4th 378, 381.) There is a difference of opinion among the courts of appeal as to whether an abuse of discretion standard or the substantial evidence test is the appropriate standard of review for a grant or denial of de facto parent status. (Compare *In re Leticia S.* with *In re Michael R.* (1998) 67 Cal.App.4th 150, 156.) Here, under either standard of review, the court did not err by granting de facto parent status to Alicia and Nathaniel.

## *II. Analysis*

The court found that by the time of the hearing, Alicia and Nathaniel had been providing Emily with excellent care for nine months. It found they had met the requirements to become de facto parents. The court noted it had some hesitation in granting the de facto parent application because it did not want its ruling to discourage Crystal from continuing her reunification efforts, but her efforts were not one of the factors to consider in making its ruling. The court's observation was not erroneous. The fact the parents were engaged in services was not relevant to its finding Alicia and Nathaniel had met their burden of proof to qualify to be designated Emily's de facto parents. The court did not err under either standard of review by granting the de facto parent application.

### DISPOSITION

The order is affirmed.

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NARES, Acting P. J.

WE CONCUR:

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O'ROURKE, J.

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AARON, J.